



DATE: DEC 5 1990

IN THE MATTER OF

TUTTLE LAND AND LIVESTOCK

CASE NO.: 91-TLC-1

ORDER OF DISMISSAL

Tuttle Land and Livestock, through their representative, Mountain Plains Agricultural Service ("MPAS"), filed a letter on November 13, 1990 requesting a de novo hearing before this office under 20 C.F.R. §655.112. The request stemmed from MPAS's disagreement with the Employment Standards Administration's (ESA) interpretation of certain applicable regulations governing H-2A workers. Specifically, ESA notified Tuttle Land and Livestock that its practice of making deductions from workers' wages to cover the costs of sleeping bags, raincoats, and overshoes was in violation of the regulations. Because MPAS does not agree with this interpretation, it requests a hearing before this office.

The U.S. Department of Labor (DOL) opposes MSPA's request for a hearing, stating that this office does not have jurisdiction to hear this matter. DOL explains that until the Regional Administrator takes action on an ESA determination by imposing a sanction, this office does not have jurisdiction under §655.112. DOL states that only after the Regional Administrator has taken steps to enforce the findings of the ESA can an employer request an administrative review.

DOL's position is correct. The regulations at §655.112 provide for administrative review after a penalty has been imposed under §655.110. As no penalty has been entered thus far, Tuttle has nothing to appeal and this office has no jurisdiction. Accordingly, this matter is hereby DISMISSED.

JOHN M. VITTON
Deputy Chief Judge

JMV/JF/mb